

REMARKS

This application has been reviewed in light of the Office Action dated March 18, 2008. The specification has been amended to incorporate disclosure from U.S. Patent No. 6,539,395 (formerly U.S. Patent Appln. No. 09/533,045) which is assigned to the Assignee for the present invention and has been incorporated by reference in its entirety since the filing of the present application. Applicants submit that no new matter has been added to the present application. Claims 1, 3-5, 8-10, 13-15, 17-19, and 21-23 are presented for examination, of which Claims 1, 8, 9, and 10 are in independent form. Claims 1, 3, 8-10, 13, 17, and 21 have been amended to define Applicants' invention more clearly. Favorable reconsideration is requested.

Applicants note that the Examiner did not indicate that the references cited in the information disclosure statement dated November 29, 2007 were considered. Applicants respectfully request the Examiner to consider the references cited in that information disclosure statement and indicate their consideration by initialing and signing the information disclosure statement as appropriate.

Claims 1, 8, 9, and 10 were rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Applicants respectfully disagree for the same reasons presented on pages 8-9 of the August 17, 2007 Amendment. Nevertheless, although it is not conceded that the rejection is correct or valid, Claims 1, 8, 9 and 10 have been amended in an effort to expedite the allowance of this application, with special attention to the points raised in paragraph 2 of the Office Action. It is believed that the rejection under Section 101 has been obviated, and its withdrawal is therefore respectfully requested.

The Office Action states that Claims 1-5, 8-10 and 12-23 are rejected under

35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,963,916 (*Kaplan*).

Applicants submit that independent Claims 1, 8, 9 and 10, together with the claims dependent thereon, are patentably distinct from the cited prior art for at least the following reasons.

Applicants again respectfully disagree that *Kaplan* discloses a method of classifying music by “emotional quality,” situation quality,” “sound quality,” and “vocal quality” as recited in the independent claims and instead is directed to a user controlled preview of music based on classifications of “genres.” Accordingly, Applicants continue to stand by the remarks in the August 17, 2007 Amendment regarding *Kaplan* .

Without conceding the propriety of this rejection, Applicants also have further amended the claims to now include the feature of “the at least one search attributes being assigned to one or more respective music samples based on a plurality of responses from a plurality of listeners to a plurality of questions” to further clarify that the claimed “attributes” correspond to classifications neither suggested or intended by prior art “genre” type classification systems. Particularly, by virtue of this feature, listeners can provide their subjective ranking of “emotional quality,” situation quality,” “sound quality,” and “vocal quality” in response to questions.

Thus, one user may rank such qualities differently based on complex reactions. Such reactions as to whether a song under a particular genre (*e.g.*, classical) is a happy or sad can depend on various factors, such as the geographic location of a listener population. Nothing has been found in *Kaplan* that is believed to teach or suggest this feature. Indeed, at best the *Kaplan* system can only search by combinations of genre and factual information (*e.g.*, by Conductor) whereas the claims of the present application

provide a search query including “a plurality of music search parameters” where at least one is an attribute and which is “assigned to one or more respective music samples based on a plurality of responses from a plurality of listeners to a plurality of questions.”

Accordingly, Applicants submit that none of the claimed categories are inherent to any of *Kaplan*’s genres which as previously explained, in the August 17, 2007 Amendment, may also have any of the above-described qualities. Therefore, Claims 1, 8, 9, and 10 are believed to be patentable over *Kaplan* and respectfully request withdrawal of the rejection under Section 102(e) .

The other rejected claims in this application depend from one or another of the independent claims discussed above and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

No petition to extend the time for response to the Office Action is deemed necessary for the this Amendment. If, however, such a petition is required to make this Amendment timely filed, then this paper should be considered such a petition and the Commissioner is authorized to charge the requisite petition fee to Deposit Account 50-3939.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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